FILE COPY

Office-Supreme Court, U.S.
FILED
APR 4 1959
JAMES R. BROWNING, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

No. 773

In the Matters

—of—

ELLIS L. SLOAN (also known as R. LAWRENCE SLOAN) and HANNAH R. SHAPIRO, attorneys,

Appellants,

—vs.—

THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK,

Appellee.

APPEALS FROM THE COURT OF APPEALS OF THE STATE OF NEW YORK

MOTION TO DISMISS APPEALS AND BRIEF

FRANK H. GORDON
Counsel for Appellee
43 West 43rd Street
New York 36, N. Y.

INDEX

PAGE

Motion to Dismiss

Motion to Dismiss Appeals 1

Brief in Support of Motion

Statement 3

ARGUMENT:

I. Appellants were not denied due process but were afforded an adequate hearing 5

A. Automatic disbarment of an attorney under the Judiciary Law of New York occurs on conviction for felony under Federal law only when the crime is also cognizable as a felony under equivalent New York law 5

B. The crime of perjury as to material matter under Federal law has been held by the New York courts to be the equivalent of first degree perjury, a felony under New York law 6

C. Appellants were afforded a hearing and due process 6

II. Historically, felony conviction has disqualified an attorney or counselor-at-law as a matter of course 7

III. Appeal does not lie from denial of leave to appeal by the New York Court of Appeals 8

Conclusion 8

PAGE

APPENDIX:

18 U. S. C. §1621 9

New York Judiciary Law §90-4 9

New York Judiciary Law §90-5 9

New York Penal Law §1620 10

New York Penal Law §1620-A 11

New York Penal Law §1633 11

Citations

CASES:

Barsky v. Board of Regents, 347 U. S. 442 7

Brounsall, Ex Parte, 2 Cowper's K. B. Rpts. 829, 98 Eng. Rep. (Full Reprint) 1385 7

Donegan, Matter of, 282 N. Y. 285, 290-291, 26 N. E. 2d 260, 262 ..... 5, 7

Ginsberg, Matter of, 1 N. Y. 2d 144, 134 N. E. 2d 193 .. 7

Goldsmith v. Board of Tax Appeals, 270 U. S. 117 7

Grace v. Board of Commissioners of the State of Alabama, 320 U. S. 708 8

Hiss, Matter of, 276 App. Div. 701, 96 N. Y. S. 2d 850 6

Kaufmann, Matter of, 245 N. Y. 423, 428-429, 157 N. E. 730, 732 ..... 5, 7

Kedroff v. St. Nicholas Cathedral, 344 U. S. 94, 99 5

Lerner v. Casey, 357 U. S. 468 6

Michigan-Wisconsin Pipe Line Co. v. Calvert, 347 U. S. 157 8

PAGE

Ryan, Matter of, 143 N. Y. 528, 38 N. E. 963 8

Stock, Matter of, 265 App. Div. 107, 37 N. Y. S. 2d 807 8

Ulmer, In re, 208 Fed. 461 (D. C. N. D. Ohio) 8

Wall, Ex Parte, 107 U. S. 265, 273 7

STATUTES:

18 U. S. C. §1621 ..... 4, 6

28 U. S. C. §1257 8

New York Judiciary Law §90-4 ..... 4, 5, 6

New York Judiciary Law §90-5 5

New York Penal Law §1620 ..... 4, 6

New York Penal Law §1620-A 4, 6

New York Penal Law §1633 ..... 4, 6

IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

No. 773

In the Matters

—of—

RUBIN L. SIEGEL (also known as R. LAWRENCE SIEGEL) and HADASSAH K. SHAPIRO, attorneys,

Appellants,

—vs.—

THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK,

Appellee.

APPEALS FROM THE COURT OF APPEALS OF THE STATE OF NEW YORK

MOTION TO DISMISS APPEALS

Appellee moves the Court to dismiss the appeals herein under Rule 16 on the ground that they do not present a substantial federal question for the following reasons:

Under Section 90-4, Judiciary Law of New York, automatic disbarment as an attorney results from conviction for a crime which is cognizable under New York law as a felony; the New York courts have held that the convictions of these appellants were for felonies; the only defenses interposed by appellants in the courts below were law points, as to which they filed answers and submitted

briefs and thus in fact were afforded a "hearing" and due process; historically, a felony conviction is followed by disbarment of course; and, finally, these offenses were such as to bear directly on appellants' moral fitness to remain on the roll of attorneys.

Appellee further moves the Court to dismiss the appeals herein under Rule 16 on the ground that the appeals are not within the jurisdiction of this Court because the New York Court of Appeals denied leave to appeal and did not decide the cases on their merits.

FRANK H. GORDON
Counsel for Appellee

IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

No. 773

In the Matters

—of—

RUBIN L. SIEGEL (also known as R. LAWRENCE SIEGEL) and HADASSAH R. SHAPIRO, attorneys,

Appellants,

—vs.—

THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK,

Appellee.

APPEALS FROM THE COURT OF APPEALS OF THE STATE OF NEW YORK

BRIEF IN SUPPORT OF MOTION TO DISMISS APPEALS

Statement

On January 18, 1958, after a joint jury trial, the appellants were convicted in the United States District Court for the Southern District of New York of perjury as to material matter and obstruction of justice. On February 18, 1958, sentence was suspended as to both appellants; Siegel was also fined.

The indictment alleged (annexed as an exhibit to the disbarment petitions) and it appears from the opinion of Judge Hand in the United States Court of Appeals (at pages 19 and 20 of the Appendix to appellants' Statement as to Jurisdiction), that appellants submitted manufactured documents to a Federal Grand Jury and perjuriously claimed them to be original memoranda. Thereafter, they sought to substantiate the validity of the false memoranda by producing fabricated stenographic notes, thus compounding their perjury.

The perjury counts under which appellants were convicted were cast under Title 18, Section 1621, United States Code.* The crimes are felonies, and are equivalent to first degree perjury which is also a felony under Sections 1620, 1620-A, and 1633, Penal Law of New York.* Thus, disbarment of appellants as attorneys was statutory under subdivision 4 of Section 90, Judiciary Law of New York.*

Appellants have consistently contended that the crimes for which they were convicted are not the equivalent of felonies under New York law; they advanced their argument orally and by brief before appellee's Committee on Grievances, by verified answer and brief before the Appellate Division, First Department, and by motion, affidavit, and brief submitted to the New York Court of Appeals on the application for leave to appeal. They predicate their claim of lack of due process upon the disagreement of the New York courts with their legal contentions.

---

* Set forth in full in the Appendix to this brief.

ARGUMENT

I

Appellants were not denied due process but were afforded an adequate hearing.

A. ***Automatic disbarment of an attorney under the Judiciary Law of New York occurs on conviction for felony under Federal law only when the crime is also cognizable as a felony under equivalent New York law.***

Subsections 4 and 5 of the Judiciary Law of New York* provide that, when an attorney is convicted of a "felony," he ceases to be an attorney or competent to practice as such, and his name shall be stricken from the rolls by order of the Appellate Division; but, if there be reversal or pardon the Appellate Division may vacate or modify the disbarment. *Matter of Kaufmann*, 245 N. Y. 423, 428-429, 157 N. E. 730, 732. To avoid the inequity which might follow a foreign conviction for an offense there classified as a felony but not considered a serious crime under New York law, the courts of New York have held that the automatic disbarment under the New York Judiciary Law follows only when conviction in another jurisdiction, such as Federal court, is for a crime equivalent to a felony under New York law. *Matter of Donegan*, 282 N. Y. 285, 290-291, 26 N. E. 2d 260, 262.

This interpretation of the New York statute by the Court of Appeals of New York will be followed by this Court. *Kedroff* v. *St. Nicholas Cathedral*, 344 U. S. 94, 99.

---

* See Appendix, page 9.

B. *The crime of perjury as to material matter under Federal law has been held by the New York courts to be the equivalent of first degree perjury, a felony under New York law.*

When appellants were convicted under Title 18, Section 1621, United States Code,* they were necessarily convicted of perjury as to material matter. Perjury as to material matter is also a felony under the Penal Law of New York, for it is first degree perjury under Sections 1620, 1620-A, and 1633.** *Matter of Hiss*, 276 App. Div. 701, 96 N. Y. S. 2d 850. The Appellate Division also made this exact determination in its disbarment orders of July 3, 1958, in the instant cases.

It is submitted that this determination is both correct on a simple reading of the statutes and also one which this Court will follow. *Lerner* v. *Casey*, 357 U. S. 468.

C. *Appellants were afforded a hearing and due process.*

Before service of the amended petitions, upon which the Appellate Division acted, appellants presented extended oral argument and briefs at hearings before the Committee on Grievances of appellee. They contended that their convictions were not for felonies under New York law and that therefore they were entitled to a hearing on the merits of their conduct before entry of disbarment orders. The Committee did not agree and presented the matters to the Appellate Division under subsection 4 of Section 90, Judiciary Law.

Appellants renewed their argument by answers and brief submitted to the Appellate Division. True, oral argument was not had. But, that was a procedural matter involving practice in the Appellate Division, not due process. Oral argument is often not permitted in an appellate court

---

* See Appendix, page 9.

** See Appendix, pages 10-11.

on motions. The present motion, governed by Rule 35-3, is illustrative.

The fact is that appellants had a full opportunity to present to the Appellate Division their contentions, arguments, and authorities in support of their position. Since their legal arguments were without force, no additional trial or hearing on the merits was necessary. Thus, they were afforded the due process declared in *Goldsmith* v. *Board of Tax Appeals*, 270 U. S. 117. We do not view *Barsky* v. *Board of Regents*, 347 U. S. 442, as requiring a contrary conclusion.

II

Historically, felony conviction has disqualified an attorney or counselor-at-law as a matter of course.

It has long been the law in New York that conviction of a felony terminates the license of an attorney to practice and requires that his name be struck from the rolls. Fitness to practice is adversely determined by felony conviction. *Matter of Ginsberg*, 1 N. Y. 2d 144, 134 N. E. 2d 193; *Matter of Donegan, supra; Matter of Kaufmann, supra.*

Nor is this rule unique in New York. It is so in the Federal courts as well. *Ex parte Wall*, 107 U. S. 265. In that case the Court said (at p. 273):

> "If regularly convicted of a felony, an attorney will be struck off the roll as of course, whatever the felony may be, because he is rendered infamous."

The Court then quoted from Archbold's Practice, from Tidd's Practice, and from Lord Mansfield, all to the same effect. The last reference appears to be to *Ex parte Brounsall*, 2 Cowper's King's Bench Reports 829, 98 Eng. Rep. (Full Reprint) 1385. There Lord Mansfield, in 1778, determined that a larceny conviction showed that Brounsall

should be struck off the roll of attorneys, and concluded: "Having been convicted of a felony, we think the defendant is not a fit person to be an attorney. Therefore let the rule be made absolute."

In the instant cases the offenses for which appellants were convicted, and which they admit, bear directly upon their fitness to practice. Obviously, the bar should not include members who deem it appropriate to submit altered documents to a Federal grand jury and to manufacture stenographic notes to lend authenticity to their false memoranda. Cf. *Matter of Stock*, 265 App. Div. 107, 37 N. Y. S. 2d 807; *Matter of Ryan*, 143 N. Y. 528, 38 N. E. 963; *In re Ulmer*, 208 Fed. 461 (D. C. N. D. Ohio).

III

Appeal does not lie from denial of leave to appeal by the New York Court of Appeals.

Appellants, by their Notices of Appeal, seek to invoke appeal to this Court from the New York Court of Appeals. That court did not decide the merits of their cases but merely denied leave to appeal. Therefore, technically, there is no jurisdiction under Section 1257, Title 28, U. S. Code, and their appeals should be dismissed. *Michigan-Wisconsin Pipe Line Co.* v. *Calvert*, 347 U. S. 157.

CONCLUSION

For the foregoing reasons, the appeals should be dismissed for failure to present a substantial federal question, *Grace* v. *Board of Commissioners of the State Bar of Alabama*, 320 U. S. 708, and because jurisdiction is lacking.

Respectfully submitted,

FRANK H. GORDON,
Counsel for appellee.

APPENDIX

Title 18, U. S. Code:

§1621. PERJURY GENERALLY

Whoever, having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed, is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true, is guilty of perjury, and shall, except as otherwise expressly provided by law, be fined not more than $2,000 or imprisoned not more than five years, or both. June 25, 1948, c. 645, 62 Stat. 773.

New York Judiciary Law, Section 90:

4. Any person being an attorney and counsellor-at-law, who shall be convicted of a felony, shall, upon such conviction, cease to be an attorney and counsellor-at-law, or to be competent to practice law as such.

Whenever any attorney and counsellor-at-law shall be convicted of a felony, there may be presented to the appellate division of the supreme court a certified or exemplified copy of the judgment of such conviction, and thereupon the name of the person so convicted shall, by order of the court, be struck from the roll of attorneys.

5. Upon a reversal of the conviction for felony of an attorney and counsellor-at-law, or pardon by the president of the United States or governor of this state, the appellate division shall have power to vacate or modify such order or debarment.

New York Penal Law:

§1620. PERJURY DEFINED

A person is guilty of perjury who 1. Swears or affirms that he will truly testify, declare, depose or certify, or that any testimony, declaration, deposition, certificate, affidavit or other writing by him subscribed is true, in, or in connection with, any action or special proceeding, hearing, or inquiry, or on any occasion in which an oath is required by law or is necessary for the prosecution or defense of a private right or for the ends of public justice or may lawfully be administered, and who in such action or proceeding or on such hearing, inquiry or other occasion wilfully and knowingly testifies, declares, deposes or certifies falsely, or states in his testimony, declaration, deposition, affidavit or certificate any matter to be true which he knows to be false; or

2. Swears or affirms that any deposition, certificate, affidavit or other writing by him subscribed, is true, and which contains any matter which he knows to be false affecting the title to any real or personal property, including the assignment or satisfaction of a mortgage, and upon which reliance is placed; or

3. Having been appointed or designated to be an interpreter in any judicial action or proceeding knowingly and wilfully falsely interprets any evidence, matter or thing between a witness and the court or a justice thereof in the course of an action or special proceeding. As amended L. 1909, c. 240, §58; L. 1927, c. 680; L. 1929, c. 86, §1; L. 1935, c. 632, §1; L. 1939, c. 186, eff. April 1, 1939.

4. Knowingly and wilfully makes a false statement, or gives information which he knows to be false, in any application for a civil service examination filed in accordance with section fourteen of the civil service law. As amended L. 1957, c. 149, §2, eff. Oct. 1, 1957.

§1620-a. PERJURY IN THE FIRST DEGREE

A person is guilty of perjury in the first degree who commits perjury as to any material matter in or in connection with any action or special proceeding, civil or criminal, or any hearing or inquiry involving the ends of public justice or on an occasion in which an oath or affirmation is required or may lawfully be administered. Added L. 1935, c. 632, §2, eff. April 30, 1935.

§1633. PUNISHMENT OF PERJURY AND SUBORNATION OF PERJURY

1. Perjury in the first degree and subornation of perjury in the first degree are felonies and are punishable by imprisonment for a term not exceeding five years, or by a fine of not more than five thousand dollars, or by both.

2. Perjury in the second degree and subornation of perjury in the second degree are each misdemeanors and are punishable by imprisonment for not more than one year or by a fine of not more than five hundred dollars, or by both. As amended L. 1935, c. 632, §5; L. 1936, c. 93, eff. July 1, 1936.